IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5675 OF 2005

Eupharma Laboratories Ltd. & anr. .. Petitioners
v/s.
Sheth Developers Private Limited
& ors. .. .. Respondents

Mr.Sanjay Jain i/by Mr.Lalit Jain for petitioners.

Mr.D.P.Desai i/by M/s.M.Dhruva & Co. for res.Nos.2 & 3.

Mr.D.P.Madaon i/by Mr.C.A.Jani for res.No.1.

Mr.Rajeev K. Pandey & Mr.Sanjiv G. Punalekar for res.No.4.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 26th August 2005

P.C. :

1. Heard the learned Counsel for the parties.

2. Mr.Jain, learned Counsel appearing for the petitioners, seeks leave to amend and to place on record the order dated 25th August 2005 passed by the Debts Recovery Tribunal II, Mumbai, (for short "DRT") which is received today afternoon. Leave to amend. The order will be added to this proceeding. It is this order which is under challenge.

3. Brief facts of this case are as follows:-

. Petitioner No.1 herein is a Company which owns a plot of land with some structures situated at Andheri. Petitioner No.2 is the shareholder and the Chairman of petitioner No.1-Company. The Company's affairs are before BIFR. Respondent Nos.2, 3 and 4 are Banks. They are claiming Rs.34 Crores from this Company. Possession of the land and the structures are already taken under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "Securitisation Act"). Thereafter sale of the property was advertised. Respondent No.1 initially offered Rs.13.50 Crores which was later on revised to Rs.16.50 Crores. Out of this amount, the amount of Rs.4,12,50,000/- has been deposited.

4. The petitioners-debtors offered Rs.12.50 Crores in full settlement which they later on revised to Rs.16 Crores. However, they deposited only a sum of Rs.67.50 Lakhs with respondent No.2-State Bank of India, which declined to accept the proposal for settlement and continued to proceed with the sale. It is material to note that the petitioners filed an Application under Section 17

of the Securitisation Act to challenge this sale which Application was rejected. An Appeal therefrom is pending in the Debts Recovery Appellate Tribunal In the meanwhile, respondent No.1 filed an Application that either the sale be completed on the terms offered by respondent No.1 or it be allowed to withdraw the amount deposited in the Trial Court. The Banks did not object to the withdrawal and the Counsel appearing for the Banks states that it was because the Banks received two offers when they fixed the price of the property at Rs.15.5 Crores as the reserved price. The DRT has granted the Application of respondent No.1 and has, under the impugned order, allowed the amount of Rs.4,12,50,000/- to be withdrawn and which respondent No.2-State Bank of India is going to release.

5. Mr.Jain, learned Counsel appearing for the petitioners-debtors, submitted that there was a collusion between respondent No.1 and respondent Nos.2, 3 and 4 - Banks. We fail to see any merit in the submission. The Banks are undoubtedly interested in realising their amounts. There is no reason whey they should allow this amount to be withdrawn unless they are getting better offers. Obviously because they are in the process of

finalising the sale on better terms that they have permitted this withdrawal.

6. Mr.Jain has relied upon para-13 of a Division Bench judgment of this Court in the case of **Manoj D. Kapasi & anr. vs. Union of India & ors. reported in 2005 (2) Maharashtra Law Journal page 670**, to which one of us (Gokhale, J.) was Member. In that matter, this Court observed that the requirements of Security Interest (Enforcement) Rules 8(6) and 9(1) were mandatory. They are with respect to the notice to the borrower and the public notice and advertisement concerning the sale of the secured assets. On the same analogy, it is submitted that the deposited amount should be forfeited by reading the relevant rules strictly. We fail to see as to how the observations in this paragraph have a bearing on the facts and circumstances of the present case and the order which DRT has passed. Here the Banks are taking steps to realise the amount due and are in that process and are obviously expecting better offers. They know what is in their interest and how to safeguard it. The petitioners are not depositing any substantial amount with the Banks but at the same time trying to create difficulties in the process of sale. No

reason to interfere. Petition is rejected.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)